IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(A) 15

Appellate Division / Civil Appeal No 88 of 2024

Between

XBP

… *Appellant*

And

XBO

… *Respondent*

In the matter of Suit No 7 of 2019

Between

XBO

… *Plaintiff*

And

XBP

… *Defendant*

JUDGMENT

[Succession and Wills — Testamentary capacity — Mental disability]

TABLE OF CONTENTS

XBP
v
XBO

[2025] SGHC(A) 15

Appellate Division of the High Court — Civil Appeal No 88 of 2024
Debbie Ong Siew Ling JAD, See Kee Oon JAD and Ang Cheng Hock J
8 July 2025

2 September 2025 Judgment reserved.

Ang Cheng Hock J (delivering the judgment of court):

Introduction

1 This appeal concerns the validity of a will. The testator had, in October 2011, executed a will where he gave his main asset, a single-storey bungalow (the "House") in Singapore, to one of his five living children, the younger of his two daughters (the "Appellant"). Just over a year later, the testator executed another will where he revoked his earlier wills and bequeathed his entire estate to another one of his children, the second of his four sons (the "Respondent"). While it is common ground that the testator had testamentary capacity in relation to the will in 2011, there is a dispute as to whether that remained the case in relation to the later will in 2012. A Judge of the High Court (the "Judge") found that the testator retained his testamentary capacity in relation to the later will. This judgment deals with the Appellant's appeal against the Judge's decision.

Background to the dispute

The Testator

2 The testator was born in October 1922 (the "Testator"). He was a career civil servant who worked for the Inland Revenue Department as a Senior Tax Officer. He was also a chartered secretary and an Associate Member of the Institute of Chartered Secretaries and Administrators, Singapore Division. In 1957, he enrolled in a part-time law course with the then-University of Singapore. He completed four years out of the six-year part-time course, but eventually never completed his legal studies. He was an educated gentleman who was proficient in English and conversant in Tamil, Hindi, Malayalam, Japanese, and Hokkien. He was purportedly also knowledgeable about the legalities surrounding the making of wills and did not wish to spend money on legal fees for such matters.

3 The Testator was father to six children, comprising four boys and two girls. The eldest son passed away in 1996. Three of his children, including the Appellant and the Respondent, gave evidence at trial. They consistently portrayed him as an authoritarian figure and a strict disciplinarian who engendered fear in all his children well into their adulthood. The unchallenged evidence before the court also suggested that the Testator was a stubborn and strong-willed man who would often impose his wishes upon his children. When he wanted things done his way, his children often did not dare to challenge his decisions or even question him, out of fear that he would disown them. He was aggressive towards his children and would not hesitate to slap them when he found them to be rude or insolent towards him. By all accounts, the Testator was also a self-reliant and independent man.

4 Following his wife's passing in 1988, the Testator lived alone at the House until shortly before his death in March 2019. The Appellant resided in her own family home not far away from the House. She was responsible for preparing dinner for the Testator almost every night ever since his wife passed away. She was also his point of contact with third parties such as hospitals and other medical professionals, and she had a joint current account with him to help in handling his recurring expenses.

The wills

5 In 1994, the Testator made a will where he bequeathed his entire estate to four of his six children. Two of his sons were left out of this will, namely his eldest son [Q] (who subsequently passed away in 1996) and his youngest son [R]. There is some evidence that he had disowned his eldest son over his objections to his son's marriage. That could have been the reason for the Testator not leaving him anything in this will in 1994. However, there is no evidence to suggest why he had done the same in relation to his youngest son. In fact, the Testator's other daughter, [S] (*ie*, the elder sister of the Appellant and the Respondent), gave evidence that her youngest brother [R] had been the only one in the family who could meet the high expectations that their father had set for his children.

6 On 10 October 2011, the Testator made a will where he left the House to the Appellant (the "2011 Will"). The draft of this will was written by the Testator's own hand on 19 September 2011. His remaining four living children were not given anything in the 2011 Will. No executor was named in the 2011 Will. The Appellant gave evidence at the trial that she was the Testator's favourite daughter, but that was disputed by [S] in her testimony. In any case, both the Appellant and Respondent are in agreement that the Testator had

testamentary capacity when he made the 2011 Will. We should add that, in these proceedings, there is no challenge to the validity of this 2011 Will.

7 Then, about a year later on 24 November 2012, the Testator made another will (the "2012 Will"), which reads as follows:

> I, [the Testator] last residing at [the House] revoke all former wills and testamentary dispositions made by me and declare this to be my last will and testament.
>
> 1. I **Appoint** [the Respondent] of [address redacted], to be my sole Executor of this, my Will.
>
> 2. **I Give, Devise And Bequeath** all my real, immovable and personal property whatsoever and wheresoever, to my son [the Respondent], absolutely.
>
> 3. The rest of my surviving children namely, will get
>
> | | |
> |---|---|
> | [name redacted] | 0% |
> | [the Appellant] | 0% |
> | [name redacted] | 0% |
> | [name redacted] | 0% |
>
> [emphasis in original]

8 The execution of the 2012 Will was witnessed by [F] and [G], both of whom gave evidence in the proceedings below. We will touch on their evidence later in this judgment. The Testator entrusted the safekeeping of this will to the Respondent. [S] gave evidence at the trial that the Respondent was the favourite son of the Testator. [F] also testified that the Testator had told him during the execution of the will that the Respondent was the favourite son (see [22] below).

The Testator's medical history

9 On 29 September 2011, the Testator was admitted to the Singapore General Hospital ("SGH"). He had gone to SGH with a complaint of poor and deteriorating memory and was initially suspected to be suffering from "senile

dementia". The attending doctor also recorded that he was "orientated to time, place, person" and was "able to recall address, PM, place, time, person, date, day". Thereafter, the Testator was admitted for further tests to be conducted, including a Folstein Mini-Mental State Examination, where he scored 29 out of 30 points. He was noted to be "a little hesitant" in his replies but was eventually able to provide accurate answers. He was diagnosed the next day with "amnestic disorder" and "minimal cognitive impairment". It was also highlighted that he faced issues of "anterograde memory impairment" and "possible Alzheimer's dementia". No medication was prescribed to the Testator upon his discharge from SGH on 30 September 2011, but he was referred to the geriatric clinic for follow up treatment. Based on later records, it appears that he did not attend at the geriatric clinic for his follow up treatment, apart from attending at the Geriatric Medicine Centre at Changi General Hospital ("CGH") in January 2012 for a computed tomography ("CT") scan of his brain (see [10] below). Although this diagnosis of "amnestic disorder" and "minimal cognitive impairment" precedes the making of the 2011 Will, as already mentioned, it is not disputed that this did not affect the Testator's testamentary capacity at the time the 2011 Will was made (see [6] above).

10 On 16 January 2012, a CT scan of the Testator's brain was conducted at CGH. The corresponding radiology report from CGH (the "CGH radiology report") states that the Testator was diagnosed with "memory loss". He was also noted to be suffering from minor "chronic microvascular ischemia and age related changes".

11 On 18, 19, 21, 23 and 25 November 2012, the Testator was treated as an outpatient for hernia pain at CGH's Accident & Emergency Department ("A&E"). On each of these occasions, he had called the emergency services for an ambulance and after being sent to the A&E, he was discharged on the same

day. It is undisputed that no *diagnosis* of Alzheimer's disease and/or dementia was made after any of these visits to the A&E. However, the patient discharge summaries dated 21 and 25 November 2012 both contained the following record:

> **Main Complaints / History**
>
> …
>
> pHx
>
> 1. Alzheimers Disease ?vascular dementia
>
> - F/U with GRM
>
> - CTB Chronic microvascular ischemia and age related changes 16/1/2012

12 As for the discharge summary dated 23 November 2012, the attending doctor's notes record as follows:

> NOTED THAT PATIENT HAS BEEN CALLING THE AMBULANCES FOR A FEW TIMES ALREADY
>
> BUT CANNOT REMEMBER WHY HE CALLED THE AMBULANCE

13 More than two years later, in February 2015, the Testator was diagnosed at CGH with "Alzheimer's disease, with w[a]ndering behaviour" and prescribed donepezil for cognitive maintenance. The Testator had been found by the police wandering in the Kallang MRT area as he had lost his way. Upon being brought to the police station, he suffered a fall. He was then admitted to CGH on 15 February 2015 and subsequently discharged on 25 February 2015. It was also stated in the CGH medical report issued in March 2015 that the Testator had "a past history of Alzheimer's dementia diagnosed in 2011 in Singapore General Hospital".

14 The Testator's mental and physical condition continued to decline after 2015. In August 2018, he was admitted to St Andrew's Community Hospital. He returned home on 2 February 2019, during which time the Appellant also moved into the House to live with him. Shortly thereafter, on 13 March 2019, the Testator passed away at the age of 96.

The proceedings below

15 On 12 April 2019, the Respondent filed a probate application in respect of the 2012 Will. The Appellant did not file a separate application for grant of probate or letters of administration in respect of the 2011 Will. However, on 16 May 2019, she lodged a caveat against the Respondent's application for grant of probate. This led the Respondent to file the present contested probate application on 31 October 2019, where he sought a pronouncement in solemn form that the 2012 Will was the last will and testament of the Testator. The other surviving children of the Testator, as well as the children of his deceased eldest son, were notified of the proceedings. But they did not enter an appearance to contest the Respondent's application for probate in respect of the 2012 Will.

16 The matter thus proceeded on the basis that the Appellant was the defendant in the application. The Appellant contended that the 2012 Will was invalid. Her pleaded case was that the Testator was not of sound mind, memory and understanding when the 2012 Will was executed because he had been diagnosed and was suffering from dementia and/or Alzheimer's disease since January 2012. There was an initial pleading that the Testator was under the undue influence of the Respondent and/or his representatives at the time the 2012 Will was made but this was subsequently abandoned. In her counterclaim, the Appellant sought a pronouncement in solemn form that the 2011 Will constituted the last true will of the Testator instead of the 2012 Will.

17 By way of a letter dated 3 December 2019, the Respondent sought further and better particulars from the Appellant in respect of her allegation that the Testator was diagnosed with and suffering from dementia and/or Alzheimer's disease. In response, the Appellant identified the three discharge summaries from CGH dated 21, 23 and 25 November 2012 (see [11]–[12] above) as the bases for her assertion. Copies of these three discharge summaries were provided to the Respondent.

18 Subsequently, on 1 February 2021, the Respondent applied for discovery against SGH and CGH, seeking to obtain the Testator's medical records for the period between January 2010 and December 2013. These documents were produced and eventually adduced as evidence at trial.

19 At the start of the trial, the Judge asked the parties to confirm his understanding that the crux of the dispute between the parties was whether the Testator had testamentary capacity at the time he made the 2012 Will. The parties confirmed this to be the case. Indeed, in her opening statement, the Appellant had taken the position that the issue before the court was whether the Testator had testamentary capacity to execute the 2012 Will, and that her case was that he lacked testamentary capacity at that time of its execution.

20 During the trial, the Respondent gave evidence of how the 2012 Will came to be prepared and executed. A key aspect of his evidence was that the Testator had on two occasions dictated the terms of a will for the Respondent to record. Both dictations were allegedly set out in terms which were similar in all material respects to the terms of the 2012 Will.

(a) The Respondent alleged that first dictation took place on 17 November 2011, about a month after the execution of the 2011 Will.

Only the Testator and the Respondent were present. The Testator dictated the terms, and the Respondent recorded this dictation in a note which he later kept. The Testator gave no further instructions to the Respondent regarding the dictation and never asked for it again. During the Respondent's cross-examination, counsel for the Appellant did not challenge the Respondent's evidence on the first dictation, although he later argued in closing submissions that the first dictation never took place.

(b) The Respondent alleged that the second dictation took place on 18 November 2012, several days before the execution of the 2012 Will on 24 November 2012. According to the Respondent, the dictation took place in the late afternoon of 18 November 2012. Once again, only the Testator and the Respondent were present. After the dictation, the Respondent stayed on to clean the Testator's house and to prune some rambutan trees, until the Testator asked the Respondent to send him to the Appellant's house for dinner. In cross-examination, the Respondent was confronted with documentary evidence showing that the Testator was taken to CGH by an ambulance at around 6.02pm on 18 November 2012. When asked if the Testator had been admitted to the hospital on that day, the Respondent explained that he could not remember because he was outside cleaning the garden. When probed further on whether he would have noticed an ambulance arriving at the Testator's house, the Respondent was unable to give a straightforward answer. The Appellant argued in her closing submissions that the Respondent's evidence on the second dictation was irreconcilable with the fact that the Testator had been taken by ambulance to CGH that day.

21 As alluded to above (at [8]), the two witnesses who attested to the execution of the 2012 Will also gave evidence at trial. The first, [F], was a 75-year-old gentleman. [F] testified that he had grown up knowing the Testator because the Testator was his father's friend. He saw the Testator regularly because he often visited a friend who lived in the Testator's neighbourhood. During these visits, he would see the Testator standing outside the gate of his house and they would engage in conversation. [F] also testified that he was very cautious when speaking with the Testator. He claimed to know the Testator well and characterised him as an authoritarian who liked to be in control of everything and to have things go according to his plans.

22 On the day of the execution of the will, [F] recalled that the Testator was lucid and vigilant. After reading the will, [F] pointed out to the Testator that he was choosing to give a 0% share to the rest of the children except the Respondent. The Testator gave [F] a "good stare" and replied that the Respondent was his favourite son and would know what to do. From this brief exchange, he understood that the Testator knew exactly what he wanted to do and therefore did not ask him any further questions about the will. After the will was executed, [F] continued chatting with the Testator on various topics. In all, he spoke with the Testator for about 30 minutes, and he did not come away with the impression that the Testator was sick or incapable of understanding.

23 The Appellant's counsel did not challenge any part of [F]'s evidence as being untrue or inaccurate.

24 The second witness, [G], was a friend of the Respondent's son. He gave evidence confirming the exchange that [F] had with the Testator. His evidence on this point was also not challenged at all.

25 The Appellant also gave evidence at trial. Despite her pleaded case that the Testator had been diagnosed with Alzheimer's disease and/or dementia from January 2012, she could not provide the names of any doctors who had diagnosed the Testator with these conditions, whether in January 2012 or anytime in that year. She was then cross-examined on the CGH discharge summaries of 21, 23 and 25 November 2012, which she confirmed were the three documents that she was relying on as the basis of her case that the Testator had Alzheimer's disease and/or dementia at the time the 2012 Will was made. She accepted that the reference to "Alzheimers disease ?vascular dementia" in two of the discharge summaries (see [11] above) was made only in respect of the patient's medical history. Thus, there was no diagnosis made by any of the doctors who attended to the Testator on those dates that the Testator had Alzheimer's disease and/or dementia. She also agreed that the CGH radiology report dated 16 January 2012 (see [10] above), where the Testator was first diagnosed with memory loss, did not contain any diagnosis of Alzheimer's disease or dementia. However, she maintained that the available medical records showed that the Testator was suffering from these conditions at the time of the execution of the 2012 Will on 24 November 2012.

26 The Appellant was also cross-examined on transactions involving a joint bank account she held with the Testator. She confirmed that the Testator was solely responsible for all transactions up until October 2012. As for the transactions for the months of November and December 2012, she initially testified that she thought that the transactions were all undertaken by herself and not the Testator. However, she later conceded that she could not remember which of the transactions were done by herself, and that the Testator could have made some payments as well, including the payment of the Testator's utilities bills by cheque.

27 Neither party called any doctors or medical experts to provide an expert opinion on the contents of the Testator's medical records.

The decision below

28 The Judge found that the Testator had testamentary capacity when he made the 2012 Will. He reached this conclusion based on the following:

(a) The testimonies of [F] and [G] were highly probative as to the mental state of the Testator at the time of the execution of the 2012 Will. The response of the Testator to [F]'s question about the allocation of the Testator's estate amongst his children indicated that the Testator understood the nature and consequences of executing the 2012 Will. [F] and [G] were independent witnesses whose testimonies were materially congruent. There was also no suggestion that they were partial witnesses.

(b) The Testator's ability to manage his own financial affairs around the time of the execution of the 2012 Will suggested that he was of sound mind.

(c) The first dictation, which was done shortly after the execution of the 2011 Will and was materially similar to the 2012 Will, indicated that the Testator had testamentary capacity at the time of the execution of the 2012 Will.

29 These three reasons also led the Judge to conclude that the Testator knew and approved of the contents of the 2012 Will.

30 The Judge also accepted that the second dictation took place, although he found it difficult to accept that the Respondent was unaware that the Testator was brought to CGH by an ambulance later that day.

31 As for the medical records relied on by the Appellant (namely, the three CGH discharge summaries of November 2012 and the CGH radiology report dated 16 January 2012), the Judge found that these did not show that the Testator suffered from a disease of the mind which negated his testamentary capacity in or around the time of the execution of the 2012 Will.

32 The Judge also rejected the rest of the evidence which the Appellant had relied on to suggest that the Testator lacked testamentary capacity because such matters had not been pleaded. These matters include (a) alleged conversations between the Appellant and the doctors who treated the Testator at the material time; (b) an alleged visit to a dentist's clinic in June 2012; and (c) the Testator's alleged conduct at his 90th birthday celebration in September 2012. In any event, the Judge concluded that these allegations were either unsubstantiated or were not indicative of a mental disability or an absence of testamentary capacity. The Judge also took a dim view of the testimonies of the witnesses who gave evidence for the Appellant:

> (a) The Testator's nephew, [D], had originally deposed that the Testator displayed increasingly frequent incidents of memory loss after his 90th birthday celebration. However, when asked in cross-examination to give specific examples of such incidents, he gave a series of contradictory replies. He was evasive in his responses and often vacillated in his testimony.

(b) [H], a friend of the Testator, would see and greet the Testator when he went to pick up and drop off his two children at a school which was located very near to the Testator's house. His children were attending that school from 2011 to 2018. He originally claimed to notice that the Testator was becoming less coherent in his replies as time passed. However, in cross-examination, [H] could not say at which point in time he noticed that the Testator had become less coherent, whether it was early in the seven-year period from 2011 or later.

The arguments on appeal

33 The Appellant has appealed against the Judge's decision. She contends on appeal that the Judge was wrong in finding that the Testator had testamentary capacity when he executed the 2012 Will, and in finding that the Testator knew and approved of the contents of the will.

34 The Appellant submits that, taking into account all the evidence of the medical records available, the Testator had, on a balance of probabilities, a history of Alzheimer's disease or vascular dementia since January 2012. In addition, the Appellant argues that the Judge should not have placed significant weight on the testimony of the witnesses to the 2012 Will, given that they had neither personal knowledge of the Testator's mental capacity and usual behaviour nor any expertise in assessing the Testator's state of mind. Further, the Appellant argues that the suspicious circumstances surrounding the preparation and execution of the 2012 Will ought to be considered in determining whether the Testator had testamentary capacity and whether he knew and approved of the contents of the will.

35 The Respondent submits that the medical evidence does not show that the Testator was diagnosed with Alzheimer's disease in January 2012. In addition, the Judge was right to find that the evidence of the witnesses to the 2012 Will was highly probative of the Testator's mental state at the time of execution of the 2012 Will as they knew the Testator and were recognised by the Testator. In relation to the presence of suspicious circumstances, this was not part of the Appellant's pleaded case. Further, the Judge was right to take into account the Testator's financial independence around the material time of the execution of the 2012 Will in determining that he had the requisite testamentary capacity.

The issues on appeal

36 The central issue before us is whether the Judge erred in finding that the Testator had testamentary capacity at the time he executed the 2012 Will.

37 The Appellant has also argued that the Judge was wrong in finding the Testator knew and approved of the contents of the will. As we pointed out to counsel at the hearing of the appeal, this allegation was not pleaded by the Appellant or raised at the trial. In response, counsel argued that the knowledge and approval of the will's contents is a requirement that the propounder of the will (*ie*, the Respondent) had the legal burden of proving before probate could be granted for the will. It is of course correct that the Respondent, as the will's propounder, bears the legal burden of proving the legal requirements that would establish the will's validity. That would include showing that the Testator knew and approved of the contents of the will. However, if this requirement is not contested, the Respondent need only adduce evidence that establishes a *prima facie* case that the Testator knew and approved of the will's contents.

38 Pleadings inform the court and the parties as to what issues are in contention and what issues are agreed. From the pleadings in the probate application below, the sole issue in contention between the parties was the capacity of the Testator to make the will, and not whether he knew or approved of its contents. A testator may have testamentary capacity but not know and approve of the contents of the will that she executed, for example, because the contents of the will were not read or explained to her. On the other hand, a testator may lack testamentary capacity, for example, because she is afflicted by a delusion that some of her children are dead, but she may nonetheless know and approve of the contents of the will. Whether the only issue in dispute was the testamentary capacity of the Testator was a question expressly raised by the Judge at the start of the trial. Counsel from both parties were asked to confirm that position, which they did. It was on this basis that the trial was conducted, and the evidence was led. The issue of whether the Testator knew and approved of the contents of the 2012 Will did not even feature in the Appellant's closing submissions in the proceedings below. Given this state of affairs, we do not see good reasons for the Appellant to raise this issue about the Testator's knowledge and approval of the contents of the 2012 Will on appeal.

39 Nevertheless, given the suspicious circumstances surrounding the execution of the 2012 Will, we explain below (at [81]–[84]) our consideration of whether there was sufficient evidence adduced by the Respondent for the Judge's finding below that the Testator did indeed know and approve of the contents of the 2012 Will.

Testamentary capacity

The law

40 For a will to be valid, the testator must (a) have the mental capacity to make a will; (b) have knowledge and approval of the contents of the will; and (c) be free from undue influence or the effects of fraud: *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373 ("*Muriel Chee*") at [37].

41 The essential elements of testamentary capacity, as set out in *Muriel Chee* at [37], are as follows:

(a) the testator understood the nature of the act and what its consequences were;

(b) he knew the extent of his property of which he was disposing;

(c) he knew who his beneficiaries were and could appreciate their claims to his property; and

(d) he was free from an abnormal state of mind (*eg*, delusions) that might distort feelings or judgments relevant to making the will.

42 The propounder of the will bears the legal burden to prove that the testator possessed testamentary capacity. This is *prima facie* established by the due execution of the will in ordinary circumstances where the testator was not known to be suffering from any kind of mental disability: *Muriel Chee* at [40].

43 Conversely, however, the mere fact that the testator is shown to be suffering from some form of mental disability does *not* automatically mean that that the testator does not have testamentary capacity. A testator whose mental

power is reduced by physical infirmity or decay of advancing age might still retain sufficient intelligence to understand and appreciate the testamentary act: *Muriel Chee* at [39], citing *Banks v Goodfellow* (1870) LR 5 QB 549 at 566.

44 In *Muriel Chee*, for example, the Court of Appeal recognised (at [50]) that dementia was a progressive illness, such that it might not have affected the testatrix's mental faculties to the extent that she lacked testamentary capacity at an early stage of her illness. The severity of the illness will therefore influence the threshold of proof required for the propounder of the will to discharge his or her legal burden of proving testamentary capacity: *Muriel Chee* at [41], citing *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 at [39]. We would add further that, if the opposer of a will asserts that the testator's illness was of an *incapacitating* nature, it will naturally be for the opposer to make good on that assertion: see s 103(1) of the Evidence Act 1893 (2020 Rev Ed).

45 At the hearing before us, counsel for the Appellant argued that the court ought to take into account the suspicious circumstances in which the 2012 Will was executed in determining the issue of testamentary capacity, to the effect that the evidential burden would remain on the Respondent as the propounder of the will to prove testamentary capacity. Referring to the statement in *Muriel Chee* (at [40]) that testamentary capacity will *prima facie* be established by the due execution of the will in "ordinary circumstances" where the testator was not known to be suffering from any kind of mental disability, he submitted that as there were suspicious circumstances, these were not "ordinary circumstances".

46 We observe that there is a distinction between (a) circumstances which raise a suspicion of testamentary incapacity; and (b) circumstances which raise a well-grounded suspicion that the will did not express the mind of the testator.

In *Ng Bee Keong v Ng Choon Huay and others* [2013] SGHC 107 (at [45]–[47]), Andrew Ang J explained the differences in the following manner:

> [45] In considering counsel for the defendants, Mr Kronenburg's, submissions on suspicious circumstances, I observe that the authorities show that the suspicious circumstances raised to rebut a presumption of knowledge and approval are distinct from those raised to rebut a presumption of testamentary capacity. I place some reliance on the defendants' own cited authority: *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* by John Ross Martyn (Sweet & Maxwell, 2008) at para 13-20:
>
> > The burden of proof may shift from one party to another in the course of a case. Where grave suspicion of incapacity arises in the case of those propounding the will, they must dispel that suspicion by proving testamentary capacity. Thus *where it is admitted by those propounding the will that the deceased suffered from serious mental illness at a period before the will, or where its terms are incoherent, irrational or strange, a presumption is raised against it, though not a conclusive one*. [emphasis added]
>
> [46] It appears from this extract that the suspicious circumstances being referred to where testamentary capacity is concerned are the circumstances that give rise to a grave suspicion of incapacity. For instance, where the testator suffers from mental disability or illness or where the terms of the will are incoherent, irrational or strange.
>
> [47] To further buttress this point, in cases where other suspicious circumstances were raised, such as the will having been prepared or procured by the person who takes a substantial benefit under it, probate was refused on the basis of lack of knowledge and approval, see generally *Buckenham v Dickenson* [2000] WTLR 1083, *Re Rowinska, Wyniczenko v Plucinska-Surowka* [2006] WTLR 487 and *Muriel Chee*.
>
> [emphasis in original]

47 Thus, it is largely the former category of suspicious circumstances which is relevant to the issue of testamentary capacity. That category includes circumstances such as where the testator suffers from a mental disability or where the terms of the will are incoherent, irrational or strange. On the other hand, the latter category of suspicious circumstances, which relate broadly to

those relevant to the preparation and execution of the will itself, would be relevant to the issue of whether the testator knew and approved of the contents of the will: see also *Muriel Chee* at [46].

48 We note that there is no magical formula comprising certain factors or criteria to ascertain whether the circumstances surrounding a will are suspicious. The degree of suspicion will invariably vary with the circumstances of the case: *Muriel Chee* at [47] (though we should point out that this observation was made in the context of whether there was a presumption that the testatrix knew and approved of the contents of the will). Ultimately, whether the Testator in the present case had testamentary capacity at the time of the execution of the 2012 Will is an inquiry that will require the court to look at the totality of the evidence, comprising both factual (including evidence of friends and relatives who had the opportunity to observe the Testator) and medical components. Both types of evidence are accorded equal importance and weight, so long as both the factual and medical witnesses had the opportunity to observe the Testator at the material time: *Muriel Chee* at [38].

49 With these principles in mind, we turn to consider the available evidence on the testamentary capacity of the Testator.

The evidence

The medical records

50 The Judge found that the medical records placed before the court did not show that the Testator lacked testamentary capacity at the time of the making of the 2012 Will. The Appellant argues that the Judge erred in this regard because there were references to the fact that the Testator was suffering from Alzheimer's disease and/or dementia and/or memory loss in the three CGH

discharge summaries of 21, 23 and 25 November 2012, as well as the CGH radiology report of 16 January 2012.

51 The main difficulty faced by the Appellant is that it is not clear on the face of these documents that the Testator was in fact suffering from an incapacitating mental condition at the material time. For instance, while the CGH radiology report of 16 January 2012 (see [10] above) had diagnosed the Testator with "memory loss", there was no evidence before the court as to the degree or severity of memory loss. The parties agreed that this diagnosis would mean that the Testator suffered from *some* memory loss, but there was no evidence as its implications, such as the *extent* to which his memory loss would affect his ability to remember the extent of his assets or his possible beneficiaries, or whether this indicated that the Testator would no longer understand what executing a will meant, so as to support a finding that he lacked the requisite testamentary capacity.

52 The CGH discharge summaries of 21, 23 and 25 November 2012 do not by themselves adequately support the Appellant's case that the Testator had been *diagnosed* with Alzheimer's disease or dementia. It was conceded by counsel for the Appellant that these documents contain no actual diagnosis that the Testator was suffering from Alzheimer's disease and/or dementia. It is clear that the Testator was only being treated as an outpatient for hernia pain at the material time, notwithstanding that he was seen at the CGH A&E. The references to "Alzheimers disease ?vascular dementia" in the 21 and 25 November 2012 discharge summaries merely recorded the Testator's past *medical history*. Without further evidence from, say, medical experts from CGH, these records do not explain the degree to which the Testator's mind or thinking might have been impacted by the conditions, nor do they explain how or to what extent such conditions could affect his testamentary capacity. The

fact that there was a question mark (or query) included in the references in the discharge summaries of 21 and 25 November 2012 further indicates that the court is not in a position to draw any inference as to whether there was actually any *diagnosis* of Alzheimer's disease and/or vascular dementia at the material time.

53 We add that the Testator called for an ambulance on four occasions prior to the making of the 2012 Will (namely, on 18, 19, 21 and 23 November 2012), complaining of hernia and groin pain each time. In our view, the Testator's apparent predisposition to calling an ambulance whenever he felt unwell does not necessarily lead to an obvious inference that he lacked testamentary capacity at the time he made the 2012 Will. The Appellant's unchallenged evidence was that the Testator's first port of call whenever he felt unwell was to go to the accident and emergency department of a hospital, and that he would often call an ambulance to bring him there.

54 The CGH discharge summary of 23 November 2012 which stated that the Testator was unable to remember why he called the ambulance could suggest that the Testator had experienced significant cognitive impairment, but we note that the officer who recorded that observation was not called to testify in the proceedings below and consequently this possibility could not be explored.

55 Thus, even if the Testator had suffered from some memory loss at or around the time the 2012 Will was executed, this is in itself insufficient for the court to conclude that he lacked testamentary capacity at the material time. Further, the other direct evidence that has been adduced on the Testator's conduct on the day of the execution of the will and his ability at that time to live independently and conduct his own financial transactions suggests otherwise.

56 We find it material as well that no doctors or medical experts were called to give evidence on the meaning of the medical terms and abbreviations used in the medical records relied upon by the Appellant, and how these alleged conditions could affect the capacity of the Testator to make a will. Even if these were not the medical professionals who personally examined the Testator, they would minimally still have been able to help shed some light on these aspects. The doctors who attended to the Testator in 2012 were also not called as witnesses, whose testimonies might have explained why the Testator's medical history in two of the CGH discharge summaries in November 2012 referred to "Alzheimer's disease" and "vascular dementia". We find that the Appellant had failed to prove that the Testator suffered from the alleged conditions at the time of the execution of the 2012 Will.

57 Counsel for the Appellant submitted that the medical records were in the agreed bundle of documents in the trial below because there was no dispute as to their authenticity and as such, these documents constituted admissible evidence which the court could rely on. In our view, while there is no doubt that these discharge summaries were part of the documentary evidence before the court because their provenance was not disputed, they do not sufficiently support the contention that the Testator lacked testamentary capacity at the material time. While the court can rely on the contents of documents to prove uncontentious facts even in the absence of direct witness testimony of those facts, this is not necessarily the case where facts are disputed. The key issue in the present case is whether the Testator lacked testamentary capacity because of some medical condition serious enough for the court to find that the testator lacked testamentary capacity. The Appellant pleaded specifically that the medical condition was Alzheimer's disease and/or dementia. This was disputed by the Respondent, who denies that the Testator had such a medical condition

at the time of the execution of the 2012 Will. In such circumstances, it is insufficient to say that the medical records by themselves adequately prove that the Testator had Alzheimer's disease and/or dementia which led to a lack of testamentary capacity, without, for example, calling as witnesses the doctors who allegedly made those diagnoses and medical experts who can explain how the medical condition could affect the testamentary capacity of the Testator.

58 The Appellant's counsel then shifted his focus to the diagnosis recorded in the SGH discharge summary of 30 September 2011 (see [9] above) that the Testator had been diagnosed with "amnestic disorder" with "minimal cognitive impairment" as well as the doctor's notes suspecting that the Testator likely had "senile dementia". We point out a number of difficulties with his argument involving this document.

59 First, this was not the Appellant's pleaded case. Her pleaded case was that the Testator developed Alzheimer's disease and/or dementia from January 2012. Second, the diagnosis of "amnestic disorder" on 30 September 2011, which parties agree refers to some memory loss, was barely 10 days before the Testator executed his 2011 Will on 10 October 2011. Despite that diagnosis, the parties agree that the Testator had testamentary capacity to make the 2011 Will. It follows that it must only have been sometime after the 2011 Will was executed that the Testator allegedly lost his testamentary capacity through worsening memory loss. This leads to the third problem, which is that there was no expert testimony adduced which could explain *how* the loss of memory would progress to a state, within the space of a year, where the Testator could have lost his testamentary capacity at the time of execution of the 2012 Will. There are other ambiguities in this regard. For example, when one refers to the Testator having been diagnosed with "amnestic disorder", it is unclear how, or in what way, the

Testator's memory was affected, and how such memory loss could affect his ability to make a will (see [51] above).

60 Furthermore, in so far as the SGH's electronic clinical note of 29 September 2011 records that there was a "primary diagnosis" of "senile dementia", we do not think that this reflected a final or conclusive diagnosis of the Testator's medical condition. This must be so since the diagnosis was made before the Testator was admitted for further testing and is accompanied by the following note which states "imp - likely senile dementia". The use of the word "likely" would suggest that any diagnosis reached by the attending doctor at this stage was merely a preliminary view or initial diagnosis. It is also stated in the same note that the Testator was "orientated to time, place, person" and was "able to recall address, PM, place, time, person, date, day". This further suggests that, consistent with the Appellant's pleaded case, even if there was a diagnosis of "senile dementia", it did *not* affect the Testator's testamentary capacity at the material time. It is therefore not appropriate to speculate, based solely on the clinical note of 29 September 2011, as to how or to what extent the Testator's condition may have deteriorated or worsened in the course of 2012.

61 Finally, the Appellant also seeks to rely on observations set out in the anaesthesia record dated 22 March 2012 in relation to the Testator's hernia surgery where it was stated that the Testator "cannot retain information" and "does not remember what surgery is to be done 10 mins after informed". She also relies on a letter issued by a dental surgeon in September 2021, where the dental surgeon alleges that the Testator was not able to "make independent requests or decisions" when the Testator visited his clinic in June 2012. These documents suffer from similar issues as the rest of the medical records and are of little evidential value in showing that the Testator's memory had been so affected as to show that he had lost his testamentary capacity. The persons who

recorded those observations about the Testator were also not called to give evidence. Hence, in so far as the Appellant is relying on those recorded observations as showing that Testator had worsening memory problems, they are of limited weight.

62 Consequently, we are of the view that the medical records, whether viewed independently, or together, do not establish that the Testator suffered from some medical condition or disability that affected his testamentary capacity at the time of the making of the 2012 Will.

63 We now turn to consider the available direct factual evidence of the Testator's state of mind at the material time.

The attesting witnesses to the 2012 Will

64 The Appellant argues that the Judge was wrong to accept the testimony of the two attesting witnesses as probative of the Testator's testamentary capacity at the time of the execution of the 2012 Will or that he knew and approved of the contents of the will.

65 We do not agree with the Appellant's submissions. In *Muriel Chee*, the Court of Appeal had explained (at [38]) that the testimony of persons who interacted with the testator are of equal significance with medical evidence in determining whether the testator lacked capacity at the time of the making of the will. In the present case, the evidence of the two attesting witnesses was completely unchallenged at trial. It was not put or suggested to them that any part of their evidence was untrue. The Appellant submits that these were not witnesses whom the Testator knew well, and they were not even aware that the Testator had visited CGH the night before because of his hernia pain. The first criticism only applies to [G]. [F], on the other hand, had known the Testator for

many years, and interacted with the Testator frequently, albeit not at length. The Judge found that [F] was able to assess whether the Testator was behaving normally. We do not see any error in the Judge's assessment of [F]'s evidence.

66 As for the fact that the two witnesses were not told that the Testator had been to CGH for his hernia pain the night before the day he executed the will, we do not see the relevance of that to the ability of the two witnesses to accurately observe whether the Testator was behaving normally. In particular, [F] gave evidence that he spoke with the Testator for a total of 30 minutes, and nothing seemed out of the ordinary. [F] had also pointed out to the Testator that he was choosing to give everything to the Respondent and nothing to the rest of his other children, and the Testator's reply suggests that he understood the nature and consequences of his actions and the identity of the sole beneficiary to his will. The Judge found the two witnesses to be independent, honest and truthful witnesses. We do not think that the Judge could be said to have erred in this regard.

67 The Appellant further argues that the Testator might have been in so much pain that he did not know what he was doing on 24 November 2012, or that he did not know what he was signing. This is an argument that touches on whether the Testator knew and approved of the contents of the will, in addition to the question of his testamentary capacity. However, this argument must fail because it is entirely speculative as to the severity of pain that the Testator was suffering, in the absence of any testimony from the doctor who treated the Testator at CGH or any medical expert on this issue. Moreover, the Testator did not ask to go to CGH on 24 November 2012 itself, which suggests instead that any persisting pain he might have felt that day was manageable. We also observe that, based on the CGH discharge summary of 23 November 2012 (which is the night before the 2012 Will was executed), the Testator was not

prescribed any pain medication. Instead, he was only asked to continue taking regular painkillers (namely Panadol) which he had earlier been prescribed on 21 November 2012. As such, it is equally possible that the Testator's hernia condition was not regarded by the CGH medical professionals as a serious medical episode, or as one where the Testator had to be prescribed some stronger analgesia. The short point is that, because no doctor or medical expert was called, the court is completely unassisted in being able to determine the severity of the pain the Testator was suffering at that time.

The Testator's ability to manage his own finances

68 The Judge relied on the Testator's ability to continue entering into financial transactions on his own accord as evidence that the testator was of sound mind at the material time. We cannot find any error with the Judge's assessment of the evidence in this regard. The Appellant eventually admitted in cross-examination that the transactions in November and December 2012 from the joint account she held with the Testator were made by the Testator, rather than by her. The Judge found that she had originally exaggerated the Testator's alleged inability to manage his own finances when, in truth, he was still doing so until at least the end of December 2012, if not later. In fact, it was not until September 2014 when the Appellant first made arrangements for his utilities bills to be automatically deducted on a monthly basis. We agree that this is probative to some extent of the Testator's mental state at the time the 2012 Will was made.

69 The Appellant argues on appeal that the Testator's ability to manage his finances was overstated given that several payments were made after they were past due. This argument does not bring the Appellant's case very far. An occasional lack of punctuality or sporadic forgetfulness is hardly indicative of a

lack of testamentary capacity. In any case, the Testator would usually pay his overdue bills by the following month, and it was not until June 2013 when the overdue payments became a more regular occurrence.

The first dictation

70 As pointed out above (at [20(a)]), the allegation that the first dictation never took place was not raised during the Respondent's cross-examination. This engages the rule in *Browne v Dunn* (1893) 6 R 67, the effect of which is that it is no longer open for the Appellant to argue the point in submissions: see *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [48], citing *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42]. The Judge therefore did not err when he accepted the evidence of the Respondent in relation to the first dictation.

71 Flowing from this, the Judge then found that the first dictation was corroborative of the fact that the Testator had testamentary capacity at the time of the making of the 2012 Will because: (a) the first dictation happened at a time when it is undisputed that the Testator retained testamentary capacity; and (b) the first dictation was made in terms which were materially similar to the terms of the 2012 Will. We do not think the Judge was wrong in drawing this factual inference. The fact that the Testator maintained a position which he took at a time when it is undisputed that he had testamentary capacity suggests that the terms of the 2012 Will were not irrational, capricious or arbitrary.

The second dictation

72 The Judge appreciated the difficulties in the evidence in relation to the second dictation, in particular, the fact that the Respondent claimed not to know that the Testator had been sent by ambulance from his house to the hospital on

18 November 2012, the day the second dictation purportedly took place. Nonetheless, the Judge found that the second dictation did in fact take place as the Respondent described and was corroborative evidence of the making of the 2012 Will.

73 We are of the view that the Judge erred in accepting the evidence of the Respondent in relation to the second dictation. This was because his evidence was simply not consistent with the undisputed facts, namely that the Testator was taken to CGH by ambulance shortly before 6.02pm on 18 November 2012. The Judge rightly recognised that it was unlikely for the Respondent not to have known that the Testator had been taken away by an ambulance on that day if, based on the Respondent's own evidence, he had been at the Testator's house from 2pm to 10pm that day.

74 There are two possibilities here. Either the Respondent has completely fabricated the episode of the second dictation, that is, there was never any second dictation and the document he recorded was a fiction; or the dictation did take place, but the Respondent was mistaken as to the date, that is, he recorded the date of the dictation on the document wrongly.

75 However, whatever may be the truth in relation to the second dictation, we are of the view that the second dictation, even if established, is not directly material to the issue of the Testator's testamentary capacity. Indeed, the Judge himself did not appear to rely on the second dictation in coming to his finding that the Testator had testamentary capacity. At best, it would be more relevant to the issue of whether the Testator knew and approved of the contents of the 2012 Will. In this regard, our view is that an assessment of the relevant evidence, even if one is to completely disregard the second dictation, is

sufficient to show that the Testator did know and approve of the contents of the 2012 Will. This will be dealt with below.

Burden of proof in relation to the testamentary capacity of the Testator

76 When confronted with the deficiencies in the state of the evidence in relation to the alleged lack of testamentary capacity of the Testator, counsel for the Appellant repeated his submission that the legal burden of proving testamentary capacity remained throughout on the Respondent. Hence, counsel contended that it was the Respondent who should have adduced the necessary evidence, including expert medical evidence, to show that the Testator had testamentary capacity at the time of the making of the 2012 Will.

77 We do not disagree that the law places the legal burden on proving testamentary capacity on the Respondent as the propounder of the will. As for the specific issue of the Testator's medical fitness, however, it is the Appellant who made the allegation in her pleadings that the Testator suffered from Alzheimer's disease and/or dementia from January 2012 such that he lacked testamentary capacity at the time the 2012 Will was made. That being the case, the evidential burden was on her to prove this specific allegation. The Respondent cannot be expected to call evidence to prove a negative, especially when the medical records throughout 2012 do not suggest a *worsening* of the Testator's condition from the time he was first diagnosed with "amnestic disorder" and "minimal cognitive impairment" at the end of September 2011, a condition which the parties agree had no impact on the Testator's testamentary capacity when he executed the 2011 Will on 10 October 2011.

78 In our view, the Appellant has not discharged her evidential burden to prove this specific allegation that the Testator suffered from Alzheimer's

disease and/or dementia from January 2012. The Judge decided that, based on all the other evidence called by the Respondent, including that from the Respondent himself, he had discharged his legal burden of proving that the Testator had testamentary capacity on 24 November 2012. In this regard, having carefully considered the evidence before the Judge and the arguments of counsel on appeal, we are unable to conclude that the Judge had erred in his assessment of the evidence that the Respondent had proved the testamentary capacity of the Testator.

79 Counsel for the Appellant nevertheless pressed the argument that, even though he was unable to show a lack of testamentary capacity from the medical evidence, the fact that the 2012 Will was executed in suspicious circumstances meant that the court should view the Respondent's evidence on the issue of testamentary capacity "with a bit more askance". The suspicious circumstances that counsel relied on in support of this argument concerned the rush in which the Respondent was in to arrange for the execution of the 2012 Will. With respect, this argument conflates the requirement of proving testamentary capacity with the requirement of proving that the testator knew and approved of the contents of the will. We had at [46] above highlighted broadly those circumstances which give rise to a grave suspicion of incapacity that are relevant to the issue of testamentary capacity. It has not been suggested that the terms of the 2012 Will are incoherent, irrational or strange, and as we have found, the medical evidence adduced by the Appellant does not show that the Testator was suffering from an incapacitating mental disability. We do not think that the Appellant has rebutted the presumption of testamentary capacity which arises when the will is executed in "ordinary circumstances where the testator was not known to be suffering from any kind of mental disability" (*Muriel Chee* at [40]), and in any event, we are satisfied that the factual evidence adduced by

the Respondent sufficiently proves that the Testator had testamentary capacity in November 2012.

Knowledge and approval of the contents of the 2012 Will

80 Once testamentary capacity is established, a rebuttable presumption arises that the testator knew and approved of the contents of the will. However, the presumption does not arise where there were circumstances surrounding the execution of the will which would raise a well-grounded suspicion that the will did not express the mind of the testator: *Muriel Chee* at [46]. In such cases, the evidential burden remains on the propounder of the will to prove that the testator knew and approved of the contents of the will despite the suspicious circumstances surrounding its execution.

81 On appeal, the Respondent does not challenge the Judge's findings that there were suspicious circumstances in this case, even though his counsel has pointed out that these were not pleaded. In other words, there were circumstances surrounding the execution of the will which raised a well-grounded suspicion that the will did not express the mind of the Testator. The Judge reasoned that the Respondent's high degree of involvement in the preparation of the 2012 Will was suspicious given that he was to be the sole beneficiary of the Testator's estate. We agree with the Judge's assessment and would further add that the Respondent was clearly acting rather opportunistically once the Testator told him he wanted to make a will naming him as the sole beneficiary. The Respondent appeared to be in a rush to get the Testator to execute the 2012 Will, to the extent that, despite having sought advice from a lawyer regarding the drafting of the will, he did not even wait for the lawyer's response before procuring the two witnesses for the Testator to execute the 2012 Will on 24 November 2012. The rush involved in the

execution of the 2012 Will was suspicious especially given the Respondent's own evidence that the Testator had told him to "get the lawyer to draft the will and produce it for [the Testator]".

82 However, the existence of "suspicious circumstances" is not itself a basis to reject the validity of the will, if the propounder is otherwise able to prove that the testator did know and approve of the will's contents: *Muriel Chee* at [54]. In this regard, we are satisfied that there is no error in the Judge's finding that the Respondent has discharged his burden to prove that the Testator knew and approved of the contents of the 2012 Will. The most probative evidence available on this point is the evidence of the two attesting witnesses in relation to the conversation between [F] and the Testator when he was about the execute the will (see [21]–[24] above). That conversation showed clearly that the Testator understood what he was doing and intended to leave his estate to the Respondent. The present case must be contrasted with the case of *Muriel Chee*, where a relatively complicated will was only read over to the testatrix, who was then suffering from dementia, while she nodded her head passively, without speaking or asking any questions. Furthermore, a medical practitioner had given expert evidence in *Muriel Chee* that, in view of the testatrix's mental condition at the time, she could have *appeared* to understand the contents of the will when it was read to her, but this did not necessarily indicate actual understanding.

83 In the present case, the 2012 Will was a simple and straightforward one with three clauses. The intent of the clauses was fully captured in the exchange that the Testator had with [F], that is, the Testator was leaving everything to the Respondent and nothing to his remaining children. Given these circumstances, we do not agree that the Judge had erred in finding that the Respondent had proven that the Testator knew and approved of the contents of the 2012 Will.

84 We would add, as mentioned earlier (at [37]), that the Appellant never pleaded that the Testator did not know and approve of the will's contents, nor did she run her case at trial on that basis. As such, it was unsurprising then that it was never even suggested to the two attesting witnesses (nor was it ever argued below) that their evidence as to the exchange between [F] and the Testator might not be true or accurate.

Conclusion

85 For the above reasons, the appeal is dismissed. The Appellant has not been able to satisfy us that the Judge erred in finding, on the available evidence before him, that the Testator had testamentary capacity when he made the 2012 Will and that he knew and approved of its contents. We order the Appellant to pay to the Respondent the costs of the appeal fixed at $50,000, all in, inclusive of disbursements.

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Ang Cheng Hock
Judge of the High Court

Narayanan Sreenivasan SC, Tan Kai Ning Claire and Wong Pei Yee (Sreenivasan Chambers LLC) (instructed), Luke Anton Netto and Nidesh s/o Muralidharan (Netto & Magin LLC) for the appellant; Sam Hui Min Lisa (Lisa Sam & Company) for the respondent.
